IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NO : 4468 of 1998

Between:

S.R.Krishna Swamy, S/o. Ramaswamy,
R/o. Door No.4 , Sudersan Gardens,
102,Velachary Raod, Gindy, Madras-32

..... PETITIONER

AND

1 The Forest Range Officer,
Kadapa Range, Kadapa,
Kadapa District.
2 The Divisional Forest Officer,
Kadapa , Kadapa District.
3 The Authorised Officer-cum-Divisional Forest Officer,
Kadapa , Kadapa District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in seizure of the Oil Tanker No.TN 09 C 3178 on 14.2.1992 without giving an opportunity of compounding the offence U/s.69, R/2 Section 44 of A.P.Forest Act as illegal, arbitrary, unjust and against the principles of natural justice and consequently direct the respondents to compound the offence by duly considering the case U/s. 59 R/w. 44 of A.P.Forest Act for compounding the offence and to release the vehicle TN 09 C 3178 and for consequential benefits.

Counsel for the Petitioner: MR.M.JANARDHAN RAO

Counsel for the Respondent Nos.1 to 3: GP FOR FORESTS

The Court made the following Order:

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THE HON'BLE MR JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NO. 4468 of 1998

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ORDER:

This writ petition is filed seeking a Writ of Mandamus declaring the action of the respondents in seizure of the Oil Tanker No. TN 09 C 3178 on 14.2.1992 without giving an opportunity of compounding the offence under Section 69 read with Section 44 of A.P. Forest Act, as illegal, arbitrary and against the principles of natural justice and consequently direct the respondents to compound the offence and to release the vehicle TN 09 C 3178.

The petitioner claims to be the owner of the vehicle bearing No. TN 09 C 3178, which was involved in a forest offence while transporting the pieces of Red Sandals in contravention of the provisions of the A.P. Forest Act, 1967 (for short 'the Act'). On 15.2.1992, the 1st respondent seized the vehicle and initiated the proceedings for confiscation of the vehicle. The case of the petitioner is that he was not aware of the illegal transportation of the contraband. It is stated that against the order of confiscation, an appeal was filed before the District Judge, Cuddapah and the same was dismissed. The only grievance of the petitioner is that he may be given an opportunity under Section 44 read with Section 59 of the Act for compounding the offence and as there is no such procedure adopted by the respondents, the confiscation of the vehicle is illegal, arbitrary and against the principles of natural justice.

A detailed counter-affidavit has been filed on behalf of the respondents stating that after conducting the enquiry under Section 44 of the Act, the Authorised Officer and the Divisional Forest Officer, Cuddapah passed confiscation orders confiscating the vehicle to the State along with red sandals vide proceedings dated 20.12.1993. It is further stated that the writ petition is not maintainable on the ground that the confiscation order passed by the Authorised Officer under Section 44 of the Act was confirmed by the District Judge, Cuddapah as well as this Court in C.R.P.No.2444 of 1997. It is further stated that under rule 8 (III) of A.P. Forest Offence (Compound and Prosecution) Rules, 1969 when the offence involved is of red sandals, the same cannot be compounded. It is further stated that the vehicle has been released on furnishing bank guarantee as per the orders of this Court in Writ Petition No.3849 of 1992 dated 20.3.1992.

Though this writ petition was admitted, on 10.7.1998, this Court declined to grant any interim order.

Now the point for consideration is as to whether the petitioner can be permitted to get the offence compounded at this length of time.

No doubt Section 59 of the Act enables any person, who committed the forest offences other than the offence under Section 52 and 55 of the Act, to get the offence compounded. It is only when such person did not come forward to get the offence compounded, then only confiscation proceedings under Section 44 of the Act shall be initiated.

In the instant case, though the petitioner stated that he was not given sufficient opportunity for compounding the offence, nothing is stated either in the appeal preferred by him before the District Judge, Cuddapah or in the revision preferred before this Court that such an opportunity was not afforded to him to compound the offence. In the absence of any categorical averment that he had been denied the opportunity of making a representation to get the offence compounded, it is not possible to believe that he was not afforded sufficient opportunity. If really it is a fact that he was not given sufficient opportunity to get the offence compounded he would have raised the said issue before the appellate authority. I, therefore, find no merit in this writ petition and the same is liable to be dismissed.

The writ petition is accordingly dismissed. No costs.

8.12.2004

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To

1. The Forest Range Officer,
   Kadapa Range, Kadapa,
   Kadapa Dist.
2 The Divisional Forest Officer,
   Kadapa , Kadapa District.
3 The Authorised Officer-cum-Divisional, Forest Officer,
   Kadapa , Kadapa District.

4 Two CCs to G.P. for Forests, A.P.High Court Buildings,

Hyderabad (OUT).

5. Two CD copies.